

BREAKING: Justices Back Toss Of State Convictions On Okla. Reservation

By [[HYPERLINK "https://www.law360.com/nativeamerican/articles/1285273/breaking-justices-back-toss-of-state-convictions-on-okla-reservation?nl_pk=894dd615-1d89-41ce-b438-7f19a35e0818&utm_source=newsletter&utm_medium=email&utm_campaign=nativeamerican"](https://www.law360.com/nativeamerican/articles/1285273/breaking-justices-back-toss-of-state-convictions-on-okla-reservation?nl_pk=894dd615-1d89-41ce-b438-7f19a35e0818&utm_source=newsletter&utm_medium=email&utm_campaign=nativeamerican)]

Law360 (July 9, 2020, 10:30 AM EDT) -- A divided [[HYPERLINK "https://www.law360.com/agencies/u-s-supreme-court"](https://www.law360.com/agencies/u-s-supreme-court)] on Thursday overturned a Muscogee (Creek) Nation member's Oklahoma state court convictions, ruling that the tribe's treaty lands are still a reservation for the application of federal criminal law, and the crimes the Creek member was accused of therefore took place on the reservation.

By a 5-4 vote, the high court threw out Jimcy McGirt's state court convictions for child sexual abuse crimes, agreeing with McGirt and the Muscogee (Creek) Nation that the tribe's eastern Oklahoma reservation still exists, his alleged crimes took place within the boundaries of the reservation and the federal government should have conducted his prosecution.

In an opinion by Justice Neil Gorsuch, the court's majority said that for purposes of the Major Crimes Act, land set aside as a reservation for the Muscogee (Creek) Nation in its 19th century treaties is still "Indian country" and subject to federal jurisdiction.

Neither the allotment of some of the tribe's land or the state's actions intruding on the tribe's authority, including abolishing Creek courts, eradicated the tribe's right to a reservation, as the state and federal governments had contended, according to the opinion.

Congress "has never withdrawn the promised reservation," and "as a result, many of the arguments before us today follow a sadly familiar pattern," Gorsuch said.

"Yes, promises were made, but the price of keeping them has become too great, so now we should just cast a blind eye. We reject that thinking," Gorsuch said. "If Congress wishes to withdraw its promises, it must say so. Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate

the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right."

Oklahoma had argued that if McGirt's conviction were overturned, jurisdictional chaos would ensue in eastern Oklahoma, including Tulsa, for both civil and criminal matters.

The high court [[HYPERLINK "https://www.law360.com/articles/1228449/justices-pick-new-case-to-weigh-okla-tribal-jurisdiction"](https://www.law360.com/articles/1228449/justices-pick-new-case-to-weigh-okla-tribal-jurisdiction)], which contended that the federal government should have handled his prosecution rather than the state because the crimes he was convicted of took place within the boundaries of the Creek reservation.

McGirt's petition effectively replaced that of Patrick Dwayne Murphy, a Muscogee (Creek) member whose case presented similar questions of whether the Creek tribe's reservation boundaries had ever been reduced or eliminated and what jurisdiction the tribe and the federal government can exercise there compared to the state. The high court never issued an opinion in the Murphy case after hearing oral arguments in the previous term.

McGirt, who said in his petition that he was a member of the Muscogee (Creek) Nation and the [[HYPERLINK "https://www.law360.com/agencies/seminole-nation"](https://www.law360.com/agencies/seminole-nation)] of Oklahoma and enrolled in the Seminole tribe, had told the Oklahoma Court of Criminal Appeals that his 1997 and 1998 convictions for first-degree rape, lewd molestation and forcible sodomy were void.

During [[HYPERLINK "https://www.law360.com/articles/1272176/justices-weigh-novelty-of-okla-tribal-reservation-case"](https://www.law360.com/articles/1272176/justices-weigh-novelty-of-okla-tribal-reservation-case)], Oklahoma contended the state had jurisdiction over the charges against McGirt because the Creek tribe's territory was never actually a reservation but instead was only a "dependent Indian community" that lost its "Indian country" status when the federal government allotted it to tribe members.

Chief Justice John Roberts filed a dissent, joined by Justices Samuel Alito and Brett Kavanaugh and mostly by Justice Clarence Thomas, who also filed a separate dissent.

Roberts said in his dissent that the Creek reservation had been disestablished and that the majority's decision, which he said would apply to four other tribal reservations in the state, has "profoundly destabilized the governance of eastern Oklahoma."

That would apply to civil as well as criminal matters, Roberts said, as the decision creates

"significant uncertainty for the state's continuing authority over any area that touches Indian affairs, ranging from zoning and taxation to family and environmental law."

McGirt is represented by Ian Heath Gershengorn, Zachary C. Schauf and Allison M. Tjemsland of [[HYPERLINK "https://www.law360.com/firms/jenner-block"](https://www.law360.com/firms/jenner-block)].

The Muscogee (Creek) Nation is represented by Riyaz A. Kanji, David A. Giampetroni, Cory J. Albright, Philip H. Tinker and Lynsey R. Gaudio of [[HYPERLINK "https://www.law360.com/firms/kanji-katzen"](https://www.law360.com/firms/kanji-katzen)] and Muscogee (Creek) Nation Attorney General Roger Wiley and First Assistant Attorney General Kyle Haskins.

Oklahoma is represented by Solicitor General Mithun Mansinghani, Assistant Solicitors General Bryan Cleveland and Randall Yates, Attorney General Mike Hunter and Assistant Attorney General Jennifer Crabb; and R. Reeves Anderson, Allon Kedem, Sally L. Pei, Stephen K. Wirth and Samuel F. Callahan of [[HYPERLINK "https://www.law360.com/firms/arnold-porter"](https://www.law360.com/firms/arnold-porter)].

The case is McGirt v. Oklahoma, case number [[HYPERLINK "https://www.law360.com/cases/5cfb0672a7c4e514774a2ab1"](https://www.law360.com/cases/5cfb0672a7c4e514774a2ab1)], in the U.S. Supreme Court.

--Additional reporting by Kelly Zegers. Editing by Gemma Horowitz.